

Lohen



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Media International Corporation
File: B-233195
Date: December 20, 1988

DIGEST

Protest that agency miscalculated protester's technical proposal, rated lowest of those received, in excluding the firm from the competitive range is denied where protester's price was so much higher than any other offeror's and the government estimate that the firm had no reasonable chance at the award irrespective of technical considerations.

DECISION

Media International Corporation (MIC) protests its exclusion from the competitive range under National Library of Medicine (NLM) request for proposals (RFP) No. 88-117/DHE. The solicitation sought a contractor to photograph the History of Medicine Prints and Photographs Collection and transfer the images (approximately 75,000) to videotape. The protester argues that the evaluation of its technical proposal was improper. We deny the protest.

The RFP, issued on July 15, 1988, provided that the technical proposals would receive paramount consideration in the selection process, and that the government would award a firm, fixed-price contract based on the conforming offer that was most advantageous to the government, considering price and other factors, which were specified elsewhere in the solicitation.

NLM received four proposals by the August 15 deadline, and found only the one submitted by Stokes Slide Services, Inc., to be technically acceptable. Stokes, which offered to perform the work for \$180,113, received a technical rating of 90.75 points (out of 100). MIC received the lowest technical score, 26.50 points, and submitted a price proposal of \$1,425,000. Of the four offerors, only Stokes was included in the competitive range.

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The protester contends that NLM misevaluated MIC's proposal in some areas, and that in others the agency could have allayed any concerns by including the firm in the competitive range and entering into discussions. MIC does not address the difference between its price and Stokes's except to note that according to the RFP the technical aspects of an offer were to have considerably more importance in the selection of a contractor than was price.

We agree with NLM's decision to exclude the protester from the competitive range, irrespective of the technical evaluation, because of MIC's high price. The competitive range consists of those proposals that have a reasonable chance of being selected for award. Consolidated Engineering, Inc., B-228142.2, Jan. 13, 1988, 88-1 CPD ¶ 24. The decision in that regard is to be based on cost or price as well as the technical considerations set out in the solicitation. Federal Acquisition Regulation § 15.609(a) (FAC 84-16). We therefore have held that even a technically acceptable proposal properly may be excluded from the competitive range where the price is so much higher than the other acceptable offerors' prices that the higher-priced offer has no real chance of winning the competition. See Coastal Electronics, Inc., B-227880.4, Feb. 8, 1988, 88-1 CPD ¶ 120 (in which the excluded offeror's price was approximate twice those of the other offerors).

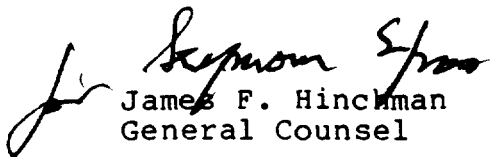
Here, MIC (technical score of only 26.50 points) proposed a price (\$1,425,000) that was almost eight times that of Stokes', the firm that received the highest technical score, 90.75 points. Also, NLM advises that its estimate for the contract was \$210,000, and we note that the prices offered by the other two unacceptable offerors were substantially closer to Stokes' than to MIC's. Moreover, nowhere in the protest does MIC suggest that discussions with NLM would have affected the firm's price substantially. In sum, we simply have no basis to think that MIC would have had a reasonable chance at this award if the firm had been included in the competitive range.

MIC also objects to the fact that NLM did not order Stokes to suspend performance in accordance with the stay provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d) (Supp. IV 1986).

The CICA stay provision, however, only applies where a protest is filed, and the agency is notified thereof, within 10 calendar days of the award. Here, NLM awarded the contract to Stokes on September 28, and so advised MIC

shortly afterwards. The protest was not filed (received) in our Office until October 13, which is 15 calendar days after the award date. Accordingly, NLM had no obligation under CICA to suspend contract performance.

The protest is denied.


James F. Hinchman
General Counsel